



## **Frequently Asked Questions: Transition from Early Intervention to Special Education October 2012**

*Prepared by the Departments of Early Education and Care, Public Health, and Elementary and Secondary Education, in cooperation with participants in the Early Childhood Transition Forums, March 2012*

**1. May a school district decide at the Transition Planning Conference not to act on the referral of a child made by Early Intervention (EI)?**

The school district cannot refuse a referral of a child made by an EI provider. EI providers are responsible for determining if a child is potentially eligible for Part B services. The school district must pursue the referral and conduct an evaluation (including all required areas of assessment) of the child in order to determine the child's initial eligibility for special education services.

**2. May a school district determine that there is not enough information to justify a referral, or conduct a "screening" prior to acting on the referral?**

Districts must accept and act on referrals from Early Intervention providers; screening cannot be used to delay a referral received from EI. Under Part B of the Individuals with Disabilities Education Act (IDEA), the only basis under which districts may not act on a referral for an eligibility determination is if there is no suspected disability. Because the EI criteria for identifying a child as potentially eligible for special education is based on a suspicion of a disability, it follows that there is no basis for a school district to refuse a referral from EI.

**3. May EI evaluations be used by the school district as the basis for determining a child's eligibility for special education?**

Evaluations must be comprehensive and complete in all areas of suspected disability. The school district is encouraged to consider any and all evaluation information that is already available, and conduct additional assessments that are needed to make a determination of eligibility for Part B.

**4. May a district require that a family submit to it proof of residency before pursuing a referral made by EI? How do enrollment policies affect referrals of children who are homeless?**

Districts may have enrollment policies that require certain proofs of residency. Such enrollment policies must be applied in a nondiscriminatory manner to all students, and must not be used as a basis for delaying access to services. State and federal laws require a school district to make a determination of a young child's eligibility and to develop and implement an Individualized Education Program (IEP) by a child's third birthday when a young child is referred 45 or more school working days before his/her third birthday.

With regard to children who are homeless, the federal McKinney-Vento Homeless Assistance Act provides additional rights to educational access. The Act requires schools to immediately enroll the child in school, even if the child lacks records normally required for enrollment, including previous academic records, medical records, proof of residency, or other documentation. If a child lacks immunization or medical records, the school district must refer the parent or guardian to the homeless assistance liaison, who will help the parent or guardian obtain the necessary records.

5. **May a parent opt to leave the child on an Individualized Family Service Plan (IFSP) after a child turns three? Can a school district use an IFSP to describe a child's services instead of an IEP after transition to special education?**

The IEP Team may decide, and the child's parents may consent, to use an IFSP for the first year of the child's services after age three. This is permitted under the IDEA at 34 CFR § 300.323(b), and is consistent with Massachusetts regulations at 603 CMR 28.06(7)(c). The IFSP must be developed in accordance with the requirements of state and federal law. If the school district chooses to offer an IFSP for the year that the student turns three, the district must provide the child's parents with a detailed explanation of the differences between an IFSP and an IEP.

6. **Does the Department of Elementary and Secondary Education have authority to enforce the 30 day timeline for parents to review the IEP that is described in state regulations at 28 CMR 28.05(7)(a)?**

While this requirement does not include an enforcement mechanism, the inclusion of this timeline in regulations emphasizes the importance of the need for school districts and parents to work together to identify and provide the right set of services for a child in a timely manner.

7. **Sometimes evaluation schedules for a child can vary. For example, a child may have had a full speech/language evaluation at age 2.8, but may have had other evaluations prior to this. In this case, what is the correct date for re-evaluation?**

While three-year re-evaluations are required under the IDEA, the IEP Team may conduct assessments in the area(s) of suspected disability and in other areas of performance at least every three years, or more frequently if necessary. The three year re-evaluation serves two purposes: (1) to confirm that the student continues to be eligible for special education, and (2) to provide current evaluative information to inform IEP development. The Team must determine the appropriate schedule for assessments based on the child's individual needs.

8. **If EI discharges a child and then the parent refers the student to the school district at age 2.6, must the child be evaluated, and if so, which agency is responsible for the child's evaluation?**

If the parent is requesting that the child receive more EI services, then the Department of Public Health (DPH) must follow policies and procedures related to EI. If the parent is

requesting that the child receive an eligibility determination for Part B special education services to begin when the child turns three, the school district must act on the parent's referral unless there is no suspected disability.

**9. Are there timelines for the school district to respond to the referral received from an EI provider?**

The district has the responsibility to create and implement an IEP for an eligible child by the child's third birthday if the consent to evaluate is received within 45 or more school working days prior to the child's third birthday.